connected when AT&T made the request; is that your testimony?

A No, sir, I didn't say anything like that. I don't know how you got that from my testimony.

Q I thought that's exactly what you said.

A Let me try it again. The scenario you painted for me was AT&T wanted to take over an account or a service from an existing customer, and you said you wanted to do it in an efficient manner. One such scenario for doing that is to take that exact customer and that exact service to that customer and do something called change as-is, which is to take over everything sort of lock, stock and barrel, whatever that customer has, without changing one thing, change the billing to AT&T or a CLEC and purchase it via resale. And that's a very efficient manner to operate in, and any CLEC is entitled to do that.

Q Okay. Now let's go back and let's talk about AT&T's request to serve that customer using unbundled network elements.

A Okay.

Q And let's assume for a moment that there is already a loop and a port hooked together serving that customer. Is it your testimony that AT&T -- you would disconnect the loop and the port and then you would require AT&T to somehow hook those back together to serve the same

customer that you already have a loop and a port out there serving?

A AT&T would force me to do that, sir, because AT&T just ordered a loop and a port, happens to be a particular existing customer. AT&T has now chosen to combine them themselves, therefore, I have no option and no choice but to do exactly what you just said.

Q So it's your testimony then that by virtue of making the request, AT&T has required you to disconnect elements that are previously connected and then require AT&T to rebundle them?

A Again, I don't -- trying not to talk past each other, there are two different options we are talking about here, maybe three options, and maybe I ought to go through each one of.

Q Let's forget about resale for a moment so we don't bump past each other.

A Okay.

Q And let's talk about a loop and a port that are connected today.

A Okay.

Q And AT&T comes to you and says I want to buy that loop, and I want to buy that port so I can serve that --

A Okay, the only --

Q Let me finish my question, please, sir.

ATTACHMENT 3

STATE OF ALABAMA

ALABAMA PUBLIC SERVICE COMMISSION

MONTGOMERY, ALABAMA

IN RE: BELLSOUTH TELECOMMUNICATIONS, INC.,

DOCKET NO. 25835

PROCEEDINGS taken before the Alabama Public Service Commission in the above-referenced matter on Monday, August 18, 1997, commencing at 9:35 a.m. in the hearing room of the Alabama Public Service Commission, the RSA Union Building, 100 North Union Street, Room 904, Montgomery, Alabama, before Amy L. Maddox, Certified Shorthand Reporter and Notary Public in and for the State of Alabama at Large.

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A. No, that's not correct at all. What the act says is that the rates shall be based on cost. It goes on further in another section of the act -- and I can't remember it right off, but I can find it pretty quickly probably to clear this up. Yes. Under 271 -- I'm sorry -- 252(d)(1), it says, "The rates shall be based on a cost determined without reference to a rate of return or other rate-based proceeding."

And what they are talking about there is that the rates did not have to be established with regard to a rate-based or other rate of return proceeding. It was trying to avoid the need or the establishment of rates utilizing rate of return proceedings as the basis for doing it. For example, at the time that the act was enacted, most states -- I know most states in BellSouth territory, and I think most in the country, were under price regulation; and

what Congress was attempting to do was to not have the states revert back to rate-based rate of return regulation as a basis for establishing these prices for unbundled elements and move away from price regulation.

So my understanding of what is there is really to provide clarification that Congress was not intending that the states go back to rate-based rate of return processes as the way to establish the prices for unbundled elements. However, the prices had to be based on cost, and they were clearly stating that that cost did not have to be a rate of return type proceeding in order to establish those costs.

Q. Mr. Varner, let's see if we can agree on the precise language that's written there in the act. It says that rates, quote, shall be based on the cost (determined without reference to a rate of return or other rate-based proceeding); is that

correct?

A. That is correct.

Q. So is it BellSouth's position that, despite that sentence, it is permissible to adopt rates which have been based on a rate-based rate of return proceeding?

A. Yes. Yes, because what the purpose of that sentence is, is to indicate that "based on cost" does not mean that you have to go back to a rate-based rate of return proceeding in order to determine the cost. You can determine cost without doing that. They were not attempting to have the states reverse where they had gone on price regulation for the purpose of establishing cost-based rates for unbundled elements and interconnection in this case.

Q. So it's BellSouth's position that the phrase "without reference to a rate of return or other rate-based proceeding" still allows the adoption of rates which were based on a rate of return or other

rate-based proceeding?

A. That were previously based on a rate of return or other rate-based proceeding. What it would not allow is the establishment of a rate-based or rate of return proceeding after enactment of the act for purposes of establishing these prices. Had the rate-based, rate of return proceeding been previously done and the rates were already established based on that proceeding, it would allow those rates to continue. What it would not allow is establishing a rate-based, rate of return proceeding after the act was enacted for the purposes of establishing those prices.

Q. Mr. Varner, the word "previously" is not in that sentence; correct?

A. No, it's not.

Q. You say on page 68 of your rebuttal testimony -- and I'll give you a chance to go there -- that "The carrier is no more the customer's access service

provider using rebundled elements than they are using resale"; is that correct?

A. That's correct.

Q. Now, the FCC's order on reconsideration specifically says that when a competitive local exchange carrier purchases unbundled switching from BellSouth, the CLEC gets the exclusive right to provide all features and functions of the switch including exchange access; is that correct?

A. I believe that does sound correct with respect to that.

Q. I'm not trying to test your memory or anything, so if I may pass something out.

MR. LAMOUREUX: Just, for the record, what I've handed out is the FCC's order on reconsideration adopted September 27, 1996, and I'd request that it either be entered into the record or just

have it taken administrative notice of.

JUDGE GARNER: Why don't I just take administrative notice? Any objection to that approach?

MR. KITCHINGS: No objection, Your Honor.

Q. And specifically I'd tabbed paragraph 11 of this order, and I've highlighted a sentence. Mr. Varner, paragraph 11 of this order of the FCC specifically said, "Thus a carrier that purchases the unbundled local switching element to serve an end-user effectively attains the exclusive right to provide all features, functions, and capabilities of the switch, including switching for exchange access and local exchange service for that end-user"; is that correct?

A. Oh, yes, that's correct. However, that's not the situation I was referring to in my rebuttal testimony. What the FCC is addressing here is a situation wherein

somebody purchased unbundled switching. What I was referring to is the case wherein somebody purchased a combination of network elements that includes essentially the port and switching as a combination. In that instance, they are no more the carrier's access provider or local service provider than they are of resale, because under that situation, those are the same things. I was addressing the issue of the precombined elements, not the issue of them purchasing the unbundled switching as a stand-alone element, which is what the FCC is describing here.

Q. Well, let's talk about that for a second. Is it BellSouth's position that when a competitor purchases -- let's say a competitor goes out and puts in its own loops somewhere, and the only thing it purchases from BellSouth are ports and the switch. BellSouth will allow that competitor to keep access charges; is

that correct?

A. I really don't recall, and, quite frankly, Mr. Scheye is a better person to answer the details of when access charges apply and what conditions than I am. Generally, in the statement what it says is that when access is provisioned utilizing more than one local carrier, each local carrier will bill its own access charges. Now, specifically which access charges apply, which specific physical arrangements, will be better addressed to Mr. Scheye.

Q. Let's talk about the loop and the switch combination that you mentioned in your earlier answer. Is it Bell's position that when a competitor purchases a combination of a loop and a switch, that competitor does not get to keep the access that it will be providing through that switch?

A. No, that's not our position. Our position is that under that situation

what the carrier has purchased is resale of basic local exchange service, so they're not providing the access. BellSouth is still providing the access. What the carrier has purchased is resale of local exchange service, and it should be treated the same as resale of local exchange service since that's, in fact, what it is.

Q. I think we might have been at cross-purposes there on that question. My question was, when the CLEC purchases the loop and the switch, is it BellSouth's position that the CLEC will not be able to collect access charges to the functions of the switch that it's providing?

A. And, again, I would say that they are not providing the functions of the switch. What they are providing is the -- what they are receiving is basic local exchange service, which they are reselling.

Q. When a competitor purchases a loop and a switch, it's still buying a switch; correct?

A. No. It is buying basic local exchange service. It's not buying unbundled elements. It's buying basic local exchange service which is available for resale.

Q. All right. Let's talk about this. Suppose a competitor comes in and says, I want a loop and a switch. I'll do whatever combining is necessary to get that loop and that switch. At that point the competitor is buying a loop and a switch; isn't that correct?

A. I believe that is correct under the Eighth Circuit's order. It said that the carriers can buy the individual elements and combine them, themselves.

Q. In that situation, is it BellSouth's position that the competitive local exchange carrier will collect the access charges that will be provided through

that switch?

A. Again, I'll refer questions to Mr. Scheye about specifically when access charges apply, given various combinations or purchases of specific access elements. The reason for that is access elements line up with certain unbundled elements, and in some cases there may be certain elements of access that apply and other cases where they're not.

Q. Let me see if I can understand in a nutshell BellSouth's position on this. Is it BellSouth's position that when a competitor purchases a loop and a switch already combined, that competitor does not become the access provider?

A. That's correct. What the competitor has purchased in that case is they've simply purchased basic local exchange service, and they're reselling it.

Q. Mr. Varner, isn't it true that when they purchase that, it's just priced as local exchange service but they actually still

are buying a loop and a switch?

A. No. Actually, what they're buying is basic local exchange service when they do that. We went through this in the arbitration proceedings, that buying the loop and the switch as a combination, which is what Mr. Gillan was talking about in his testimony -- and, in fact, he has used the term "preassembled combinations" to describe what he wants -- it's simply nothing but basic local exchange service.

Q. And, Mr. Varner, what's your support for the position that it is simply local exchange service?

A. I'm sorry. I don't quite understand.

Q. Is there a law, statute, regulation, order that says that?

A. Not to my knowledge. The arbitration order, however, says that in that situation, the services -- I can't remember the exact words, whether they used "equivalent," "identical," or

something like that -- that in that situation the only thing that's different is the way that the carrier has ordered the services, and for that reason, in the AT&T arbitration, the Commission concluded that the purchase of precombined elements and resale should be priced the same. So the Commission recognized at that time that the two were the same thing. It was just that the only difference between the two was the way that the competitor requested them when they ordered them, so that was recognized by the Commission already.

Q. But, Mr. Varner, the Commission didn't say that when a competitor purchases a loop and a switch, it's providing the service. It simply said it pays for that at the resale rates; isn't that correct?

A. I believe that is correct. The Commission went on to say at that time that, in reaching a decision, they were operating under the FCC's rules that were

ATTACHMENT 4

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BELLSOUTH

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Mark L. Feidler
President – Interconnection Services

September 12, 1997

William J. Carroll
Vice President
AT&T Communications, Inc.
Room 4170
1200 Peachtree Street
Atlanta, Georgia 30309

Re: Your August 29, 1997, letter to Duane Ackerman

Dear Jim:

As committed on September 5, 1997, I am responding to the issues discussed in your August 29,1997 letter to Duane Ackerman. Let me begin by saying BellSouth is not delaying AT&T's entry into the local market. BellSouth has expended hundreds of millions of dollars on, and has dedicated hundreds of employees to, the sole task of assisting new local service providers such as AT&T in entering the local market. The task, as you admitted in your August 1, 1997 letter, is not without tremendous challenges. Other local providers are entering the local market, investing in their own facilities, and are competing with BellSouth and winning local customers. These local providers are using the systems in which BellSouth has been investing hundreds of millions of dollars and are finding that they allow for real competition. Local competition is here and will continue to grow whether AT&T enters the market now or some time in the future.

Addressing your assertion that there is an "increasing tendency to push downward within BellSouth employee ranks, responsibility for critical issues," given the number and complexity of the implementation issues involved, both companies need to empower employees with expertise and knowledge in many disciplines at many levels to move forward and resolve implementation issues. Our role as members of upper management is to provide policy direction and support to those empowered by us. As an officer of BellSouth, I am involved with determining the policies of BellSouth as well as guiding the essential individuals in my department in the resolution of major issues concerning the implementation of AT&T interconnection agreements as well as the implementation of other agreements BellSouth has executed. BellSouth will continue to devote the time and energy of many highly capable people, and significant capital, to meeting AT&T's demands together with the needs and demands of the hundred plus other new local service providers that have contracted with BellSouth for interconnection services.

BellSouth has stated to AT&T at least three times in writing and numerous times verbally that BellSouth is committed to continuing operational testing of the combined unbundled loops and ports (UNE-P as you refer to it) in Florida and Kentucky and that it has committed the

appropriate personnel to support this process. To date, AT&T has, pursuant to Attachment 4, section 2.2 of the BellSouth /AT&T Interconnection Agreement, identified and described only four combinations, which were received by BellSouth in April of 1997. Rather than responding to BellSouth's written and verbal commitments by identifying any further combinations, or sending additional orders and testing of the systems, AT&T has only continued to "paper the record" with assertions that BellSouth is not committed to testing. BellSouth hereby once again reaffirms that it stands ready, willing and able to test the UNE ordering, provisioning and billing systems. It is only through such testing that the companies can determine and address where the problems, if any, lie. While BellSouth believes it is aware of AT&T's UNE testing requirements for Florida and Kentucky, if AT&T believes that a restatement of those testing requirements is required, then by all means communicate them to BellSouth again.

You further requested that BellSouth confirm certain positions regarding the 8th Circuit Court of Appeal's July 18, 1997 opinion as well as the recently announced FCC decisions regarding both Ameritech's 271 application and Shared Transport. Following are BellSouth's responses to your confirmation requests.

AT&T's confirmation request:

1. BellSouth will provide all combinations of unbundled network elements, including those that BellSouth asserts may replicate existing BellSouth services, at rates based on forward-looking economic costs;

2. BellSouth will not separate unbundled network elements requested by AT&T where such elements are currently combined in BellSouth's network. That is, where AT&T orders combinations of UNEs that in the ordinary course are already combined within BellSouth's network, such as the platform being ordered in Florida, BellSouth will provide these elements as combined in BellSouth's network; and

3. BellSouth will impose no additional charges above the sum of the rates for all applicable UNEs contained in our interconnection agreements for UNEs that are already combined in BellSouth's network.

BellSouth's response:

The 8th Circuit plainly stated that the Act "unambiguously indicates that the requesting carriers will combine the unbundled network elements themselves." Therefore, there is no legal duty on the part of BellSouth to provide combined network elements to AT&T. BellSouth will provide to AT&T, at the rates established by the various state commissions, the individual network elements delineated in the AT&T/BellSouth Interconnection Agreement, and AT&T may combine the ordered elements in any fashion it chooses. Further, consistent with the 8th Circuit's ruling, if it is AT&T's plan to utilize all BellSouth network elements to provide finished telephone service, AT&T may purchase all of the individual unbundled network elements needed to provide finished telephone service, but AT&T must combine the necessary elements. The 8th Circuit ruling clearly finds, however, that BellSouth, as an ILEC, has no obligation to do so. The 8th Circuit expressly stated in upholding the FCC's rule that "[our] ruling finding that [the Act] does not require an incumbent LEC to combine the elements for a requesting carrier establishes that requesting carriers will in fact be receiving the elements on an unbundled basis." Thus, the only meaning that can now be given to FCC Rule 51.315(b) is that an

incumbent LEC may not further unbundle a network element to be purchased by another local provider unless explicitly requested to do so by that provider. The rule cannot be read as requiring ILEC's to deliver combinations to providers such as AT&T. BellSouth, however, is examining the viability of providing various combinations of UNEs as a service to its interconnection customers. Such service offerings would have prices that reflect the 8th Circuit's finding that the use of unbundled network elements involves greater risk to the other provider than does resale.

BellSouth nonetheless recognizes that the interconnection agreements that have been executed thus far obligate BellSouth to accept and provision UNE combination orders. Thus, until the 8th Circuit's opinion becomes "final and non-appealable," BellSouth will abide by the terms of those interconnection agreements as BellSouth expects AT&T will. Accordingly, assuming execution of the Alabama agreement, BellSouth will accept orders for and provision the four UNE combinations identified and described by AT&T pursuant to Attachment 4, section 2.2 of the Agreements. In all states except Kentucky (Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee), when AT&T orders a combination of network elements or orders individual network elements that, when combined, duplicate a retail service provided by BellSouth, BellSouth will treat, for purposes of billing and provisioning, that order as one for resale. In Kentucky, when AT&T orders a combination of network elements or orders individual network elements that when combined duplicate a retail service provided by BellSouth, BellSouth will treat the order for purposes of billing and provisioning, as one for unbundled network elements. In all states, when AT&T fulfills its obligation under Attachment 4, section 2.2 and identifies combinations of unbundled network elements that, when combined do not duplicate a retail service, BellSouth will accept and provision that order as one for unbundled network elements priced at the individual network element rates. In Alabama, where BellSouth and AT&T have not yet executed an interconnection agreement, BellSouth is willing, until the 8th Circuit's opinion becomes final, to execute an interconnection agreement that reflects the terms described above. That agreement would be subject to modification as discussed below. This interim accommodation is consistent with what BellSouth and AT&T have done in other states. I understand that such an interconnection agreement has been proposed and I will instruct Jerry Hendrix to execute that agreement after he has had a opportunity to fully review the agreement.

Immediately upon the 8th Circuit's opinion becoming final, BellSouth expects, pursuant to section 9.3 of the General Terms and Conditions of the Interconnection Agreement, that the interconnection agreements will be modified to remove all references to BellSouth's obligation to combine unbundled network elements for AT&T and to otherwise reflect the Court's decision. If following these modifications, AT&T believes that, rather than directly meeting its obligation under the Act to do the combining of any BellSouth UNEs, it would prefer to have BellSouth perform services related to combining and/or operating and maintaining combined elements, BellSouth, as stated above, would consider such a request and be prepared to enter into negotiations regarding appropriate terms and conditions.

4. Florida UNE Testing - Billing

Concerning the billing received by AT&T in the Florida testing, I offer the following corrections and clarifications. For the UNE-P orders involved with this test, the following elements may be billed in the CRIS billing system:

CRIS
Unbundled Local Switching - Line Port (ULS-LP) (NRC + Monthly recurring)
Unbundled Local Switching - Switching Functionality (ULS-SF) (per MOU)
Unbundled Local Switching - Trunk Port (ULS-TP) (per MOU)
Unbundled Tandem Switching - Switching Functionality (UTS-SF) (per MOU)
Unbundled Tandem Switching - Trunk Port (UTS-TP) (per MOU)
Unbundled Interoffice Transport - Shared (UIT-S) (per MOU and per MOU-mile)
Operator and DA elements (have not been implemented for this testing timeframe)

As of August 14, 1997, BellSouth has the capability to bill the MOU based switching and transport elements for all local direct dialed calls originating from ULS-LPs (or in this case UNE-Ps). In your list, you also included Unbundled Interoffice Transport - Dedicated (UIT-D), Unbundled Packet Switching (UPS), AIN, LIDB, SS7 Signaling, 800 Database, Directory Access to DA Service, Directory Assistance Transport and Directory Assistance Database Service. These elements are not applicable for the scenarios that you have requested to be tested in Florida and Kentucky.

You also stated that AT&T has yet to receive the daily usage recordings that BellSouth agreed to transmit during the Florida test. As issues regarding daily usage recording were encountered, they were addressed by BellSouth and corrective actions were taken. Further testing was limited due to the lack of actual usage found on the four accounts. The Jan Burriss/Pam Nelson team that meets regularly to discuss and resolve issues recently agreed that the testing team should formalize the usage recording testing. The team agreed to implement a logging system so that the users would record their various calls, time of day, type of call, duration, etc., and provide the log to BellSouth so that BellSouth could follow the call through its systems.

In connection with the UNE concept test, BellSouth is not currently sending AT&T access records associated with UNEs. Pursuant to the law at the time, BellSouth's position had been that BellSouth should continue to bill access to the IXC and that transmitting records was therefore not required. Subsequent rulings now appear to support the need for BellSouth, in instances where the use of unbundled network elements is not duplicating an existing BellSouth service, to send records in order for the local provider to bill the IXC interstate access. Given these changes, BellSouth concurs that BellSouth and AT&T need to come to an agreement of the formatting of these access records. In addition, BellSouth and AT&T need to work through industry fora to reach agreement on standards for record exchange and meet point billing.

BellSouth does not agree with your assessment of BellSouth's participation on Call Flow discussions. BellSouth met with your representatives in May of 1997, and participated on a conference call in June of 1997 in an attempt to reach agreement. However, due to key differences in the underlying positions of the companies, the representatives were not able to reach agreement except for those call flows for intraswitch local calls. BellSouth, as always, stands ready to meet with AT&T to further discuss call flows and it is my understanding that such a meeting has been scheduled.

I trust that this answers any question you may have had. BellSouth, as it has consistently done in the past, is prepared to discuss all issues that AT&T may raise. To the extent you have any

further questions or comments regarding BellSouth's policies or major issues regarding implementation of the AT&T/BellSouth interconnection agreement, please direct them to me.

Regards,

M. L. Feidler

Mark Feidler

ATTACHMENT 5